

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 482 of 1999

with

CRIMINAL REVISION APPLICATION No 281 of 1999

WITH

MISC. CRIM APPLICATIONS NO : 4336, 3323, 3466 AND

3498 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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AEOLOS MARITIME S A

Versus

M/S SEA CREST SHIPPIN INC  
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Appearance:

1. Special Criminal Application No. 482 of 1999  
MR RJ OZA for Petitioners  
MR UMESH TRIVEDI ADDL PUBLIC PROSECUTOR for Respondent No. 1
2. Criminal Revision ApplicationNo 281 of 1999  
MR RS SANJANWALA for Petitioners  
MR UMESH TRIVEDI ADDL PUBLIC PROSECUTOR for Respondent No. 1  
MR RJ OZA for Respondent No. 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 20/07/1999

ORAL JUDGEMENT

#. Rule. Mr. Umesh Trivedi, learned APP, Mr.R.J.Oza, Ms.Megha Jani and Mr.R.S Sanjanwala waive service of rule on behalf of respective respondents in above all respective matters.

#.. As all these matters arise out of the same order passed by learned Chief Judicial Magistrate, Bhavnagar, involving same parties and by and large interse connected grievances, they were heard together on question of admission and interim relief and pursuant thereto this common order is being passed.

#. Although these matters arise out of a criminal complaint and orders passed therein, it appears from the material produced before this Court that the dispute or the controversy has its roots in a transaction relating to sale and delivery of a ship called M.V. Bantry. It would, therefore, be expedient to have a sketch of evidence and developments in this regard at the outset.

#. One Aelos Maritime S.A. of Liberia as the owner of M.V. Bantry entered into a memorandum of agreement (MOA) on 13.4.1999 with one Seacrest Shipping Inc. of Charlestown Nevis to sell the said M.V. Bantry for a price fixed at US dollars 19,27,936 (former, i.e. Aeolas Maritime S.A. would be hereinafter referred to as "the seller" and the latter, i.e. Seacrest Shipping Inc. would be hereinafter referred to as "the cash buyer"). By virtue of this MOA, the cash buyer was expected to pay 10% of the price immediately which was done by the cash buyer. Lateron, on 24th April, 1999, the cash buyer entered into MOA with M/s Alang Ship Breakers Limited to sell the ship for price of US dollars 17,77,316 (M/s Alang Ship Breakers Limited would be hereinafter referred to as "the end buyer").

#. On 26.4.1999, notice of readiness was tendered to the cash buyer by the seller. The cash buyer seems to have raised certain objections as to the readiness, but at the same time, appears to have passed over the notice of readiness to the end buyer. It appears that the end buyer appeared to be ready to buy the ship despite the

objections raised by the cash buyer or to put it differently, with the defects shown by the cash buyer to the seller. The end buyer, therefore, in turn got opened a letter of credit in favour of the cash buyer on 26th April, 1999. It also appears that a physical delivery certificate came to be executed on 28th April, 1999 by Captain Taumazos Ioannis, the Master of vessel M.V. Bantry (against whom later on a complaint came to be filed by the end buyer and, therefore, he shall be hereinafter referred to as "the accused" for sake of convenience) in favour of the end buyer in witness of the seller's agent.

#. The real disputes or controversies arose thereafter. The end buyer lodged a criminal complaint on 30.4.1999 (may be in the very early hours of the day) before the Chief Judicial Magistrate, Bhavnagar, against the accused for offences punishable under Sections 447, 387, 540, 546(2) and 114 of the Indian Penal Code, contending, inter alia, that the complainant had purchased M.V. Bantry from the cash buyer on 25th April, 1999 and has paid the price of US dollars 17,77,317 and the possession is also given to the complainant and is received by the complainant. It was contended that, as such the complainant holds the title and possession of the ship. It was contended further in the complaint that physical delivery certificate is given on 28th April, 1999 and, therefore, the accused and other crew members are supposed to leave the ship, still the accused and his companions have retained the possession of the ship illegally and are causing damage to the property of the complainant. That on the day of the complaint, the complainant's agent went with a tug boat and contacted the accused to inquire as to when can they board the vessel. It is alleged in the complaint that, at that point of time, the accused got annoyed and abused the complainant's agent in English language and threatened them that, if they boarded the ship, they would be killed and thrown into the sea. The learned Chief Judicial Magistrate, after taking statement of Vinay Bansal, representative of the complainant-firm ordered to issue summons against the accused for the offences as alleged and made the same returnable on 30th April, 1999 at 5.00 P.M. Along with the complaint, certain applications came to be tendered to the Chief Judicial Magistrate, Bhavnagar and he in turn passed certain orders. Certain applications followed thereafter, followed by orders by the Chief Judicial Magistrate and, ultimately, followed by filing of Criminal Revision Applications, Special Criminal Applications and Misc. Criminal Applications by different parties before this Court. The various

applications tendered and orders passed by the C.J.M.  
can be chronologically tabulated as under :-

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SNo.	Ex.No.	Date	Substance of relief sought	Substance of order.
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01	1	30.4.99	Criminal complaint	Summons issued on No.2834/99 seeking accused to appear to punish accused before CJM at 5.00 u/s.447, 387, 540, PM on 30.4.99. 546(2) and 114 of I.P.C.
02	3	30.4.99	Praying for sending	Direction given to Yadi of the order arrange for police to G.M.B's. Alang protection as office or Bhav- ordered earlier by nagar office & to the Court and to Asstt. Commissioner send Yadi to issue of Central Excise instructions to & Customs. the Captain of the Ship not to take any action which may damage the ship or the title of the complainant over the ship.
03	4	30.4.99	Accused liked to	Bhavnagar/Alang flee from India & Port Office direc- therefore police ted to keep the be directed to accused present seize the passport before Court at etc. of the accu- 5.00 P.M. on sed & produced 30.4.1999 along before the court. with passport and to inform the captain in the language under- stood by him. Copy of the order directed to the accused.

#. On 17-5-1999, the learned Chief Judicial  
Magistrate has passed order directing release of the  
M.V.Bantry on the vendor furnishing the security of

Rs.1.25 crores. This has agitated both the seller as well as the end buyer. According to the seller, there is no need for him to furnish the security and according to the end buyer, the amount of security is much less than the stake involved.

#. However, the parties have now arrived at compromise and have entered into an agreement. A copy of which, is produced on record. According to which, the ship is to be released in favour of the original owner / seller who in turn is to sell to the cash buyer and the cash buyer in turn to sell to the end buyer. It is also agreed to between the parties that all the litigations both civil and criminal are to be brought to an end. In pursuance thereto, the parties have withdrawn their respective civil suits pending before the Civil Judge (S.D.), at Bhavnagar.

#. The question remains about the criminal proceedings. In this regard, it may be noted that so far as the criminal case No : 2834/99 pending before the learned J.M.F.C., Bhavnagar is concerned, the offence is punishable under Section 447, 504 (1), 387 and 506 (2) of Indian Penal Code. Sections viz. 387, 506(2) of Indian Penal Code are non compoundable and therefore, the parties concerned, will have to proceed with the matter. However, as agreed and specifically expressed before this Court by the learned counsels, the parties do not want to pursue the matter nor do they want to lead any evidence in the matter as misunderstandings have been resolved, it would therefor be open for the parties to approach the trial court and have the matter finally decided. It is also stated before this Court that parties will appear before the Trial Court on 22nd July, 1999.

##. So far as the other complaints are concerned, viz. Criminal Case No : 2864 is concerned, it is for offences punishable under Section 406, 402 read with Section 114 of Indian Penal Code. If Section 302 of Cr.P.C. is considered, offences are compoundable and the same are permitted to be compoundable by this Court. Therefore, that complaint will not survive.

##. So far as the Criminal Case No : 3273 of 1999 before the learned J.M.F.C., Bhavnagar is concerned, it is under Sections 406, 402, 467, 468, 469 and 471 of Indian Penal Code. Out of all these offences, only offences punishable under Section 406 and 402 are compoundable. The matter will have to be proceeded with before the J.M.F.C. and before whom the parties will appear on 22nd July, 1999.

##. Since the Civil disputes are settled and suits are withdrawn and since the criminal disputes also are settled and the matters are to be brought to an end by the parties, certain orders are required to be passed to possible the implementation of the agreement entered into by the parties.

##. Thus, considering the facts and circumstances, this Court pass the following order without entering into merits and only on the basis of the agreement entered into between the parties.

(A) Criminal Revision Application No : 281 of 1999

do not survive having become infructuous in light of the Compromise Agreement between parties and consequently order hereunder regarding possession of M.V.Bantry.

(B) Misc. Crim. Application No.3323 / 99 preferred

by First National Bank of Maryland seeking to enter the litigation will not survive as Crim. Revision Application No : 281/99 itself does not survive. It stands disposed of accordingly.

(C) Misc. Criminal Application No : 3498 of 1999

praying for quashing of Criminal Case No : 2864/99 stands allowed as the dispute between the parties is resolved and the offences are permitted to be compounded. The accused herein are acquitted of the charges against them therein.

(D) So far as the Misc. Crim. Application No :

3466 of 1999 preferred by Alang Shipbreaking Ltd. to stay the matter till disposal of Special Civil Suit before Civil Judge (S.D.), Bhavnagar will not survive as the suits are withdrawn and Crim. Revision Application No : 281 of 1999 stands disposed of.

(E) Misc. Crim. Application No : 4336 of 1999 will

not survive in light of the agreement entered into between the parties and the statement by learned counsel for Respondent No.2 - Seller that the complainant does not want to pursue the complaint or to lead evidence, the matter stands disposed with direction to the parties to appear before the learned J.M.F.C., Bhavnagar on 22-7-99 for doing the needful in C.C. No : 3273 of

1999.

(F) Special Crim. Application No : 482 / 99 will not survive in light of the agreement between the parties. The parties will appear before the J.M.F.C., Bhavnagar on 22-7-1999 for doing the needful in C.C. No : 2834/99. Special Criminal Application No : 482 / 99 stands disposed of accordingly.

(G) In order to facilitate the implementation of the agreement between the parties.

M.V.Bantry in custody of Court and held by the Gujarat Maritime Board authorities shall be handed over to the seller forthwith on production of certified copy of this Order.

(H) The passport of the accused and other crew of M.V.Bantry shall be released forthwith and be handed over to the Alang Shipping Services on production of certified copy of this order.

(I) On parties' appearance before the J.M.F.C. in C.C. No: 2834/99 and 3273/99 the learned J.M.F.C., Bhavnagar will proceed with the matter on priority basis preferably on day to day basis, and dispose of the matter in accordance with law.

##. The learned counsels appearing for the parties state that although the agreement between the parties is to effect that all the civil and the criminal disputes are to be withdrawn within 3 working days of entering into the agreement i.e. within 3 working days from 16th July, 1999, all the parties concerned, agree and undertake to extend this period and without waiting for the disposal of the criminal cases before the learned J.M.F.C., Bhavnagar, they shall implement and execute the agreement between them as entered into between them on 16th July, 1999. It would be open for the parties to apply for exemption from personally attending the trial court on every date of hearing and the Court concerned shall decide the same in accordance with law.

##. With above observations, the matters stand disposed of accordingly. Rule made absolute accordingly in Misc. Criminal Application : 3498 of 1999. Rule discharged in Criminal Revision Application No : 281/99, Misc.Crim. Application No : 3323 99, Misc. Crim. Application No : 3466 / 99, Misc. Crim. Application No : 4336 / 99 and

Special Crim. Application No : 482 / 99.

##. The R & P in C.C. No : 2834 / 99 to be sent to the trial court forthwith. The certified copy to be furnished at the earliest. The Yadi of this order be sent to the Additional Port Officer, Gujarat Maritime Board at Alang and Port Officer, Gujarat Maritime Board, Bhavnagar and Superintendent of Customs, Alang and Assistant Commissioner of Customs, Bhavnagar. Writ to be sent immediately.

Date : 20-7-1999 [A.L.DAVE, J.]

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